

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 75-1006

To be argued by  
PHYLIS SKLOOT BAMBERGER

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-against-

WILLIE L. ROLAND,

Appellant.

*B  
P15*  
Docket No. 75-1006

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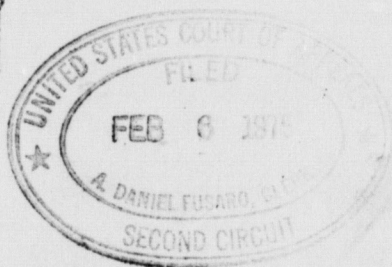
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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
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Of Counsel

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JUDGE MAC MAHON

74 CRIM. 996

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Thomas M. Fortuin, AUS
✓ WILLIE L. ROLAND	791-0932
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(07)					
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					
21:812, 841(a)(1),(b) Distr. & possess.					
w/intent to distr. Heroin, I. (Cts. 1&2)					
(Two Counts)					

DATE	PROCEEDINGS
10-24-74	Filed indictment.
11-4-74	Deft. appears Atty. present pleads not guilty. 10 days for motions. Deft. released on his own recognizance. Cannella, J. Case assigned to MacMahon, J. for all purposes.
11-18-74	Pre-Trial Conference held. Trial date set for 11-20-74
11-20-74	Trial Began (Atty for Deft., Roland Thau + U.S. Atty Fredrick Davis )
11-21-74	Trial continued and concluded. Jury returns verdict at 8:35 PM. Jury finds Deft. NOT GUILTY on Count One - GUILTY on Count Two. Pre-Sentence report ordered. -- MacMAHON, J. Sentence on 12-17-74 @ 12:45.





TMF:emw  
74-2668

USA-33a-521 - IND/INF - DISTRIB. POSSES NARC. DRUG  
Rev. 5-27-72

JUDGE MAC MAHON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 996

----- x  
UNITED STATES OF AMERICA :

-v- :

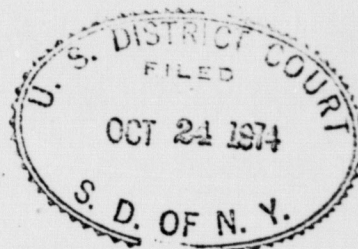
WILLIE L. ROLAND, :

Defendant :

INDICTMENT

74 Cr.

----- x  
FIRST COUNT



The Grand Jury charges:

On or about the 26th day of March, 1974  
in the Southern District of New York

WILLIE L. ROLAND

the defendant, unlawfully intentionally and knowingly did  
distribute and possess with intent to distribute a  
Schedule I narcotic drug controlled substance, to wit,  
approximately 24.5 grams of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

TMF:emw  
74-2668

SECOND COUNT

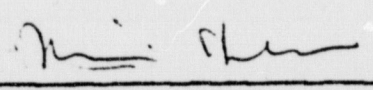
The Grand Jury further charges:


On or about the 14th day of June, 1974  
in the Southern District of New York,

WILLIE L. ROLAND

the defendant , unlawfully, wilfully and knowingly did  
distribute and possess with intent to distribute a  
Schedule I narcotic drug controlled substance, to wit,  
approximately 28.8 grams of heroin.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A).)

  
FOREMAN

  
PAUL J. CURRAN  
United States Attorney





# United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

WILLIE L. ROLAND,

Defendant.

## INDICTMENT

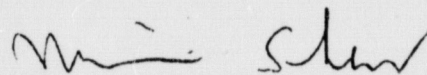
74 Cr.

(21 USC §§ 812, 841(a)(1)  
and 841(b)(1)(A).)

PAUL J. CURRAN

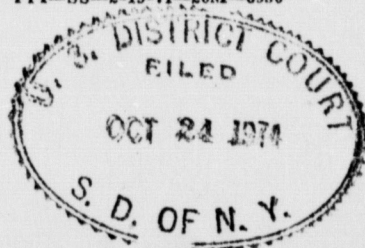
United States Attorney.

A TRUE BILL



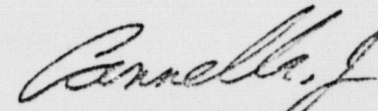
Fcc:eman.

FPI-SS-2-19-71-20M-6950



NOV 4 1974

Def't appears (atty Roland  
Thru Legal Aid Present) Def't  
pleads N/G Case assigned to  
Mac Mah. J. 10 days for motions  
Def't ROR MR



11-18-74 Pre-Trial Conference Held. Trial date set for 11-20-74

11-20-74 Trial Began (Atty for def't. Roland Thru.)  
(U.S. Atty Frederick Davis)

11-21-74 Trial Continued and Concluded.

Jury returns verdict at 8:35 P.M.

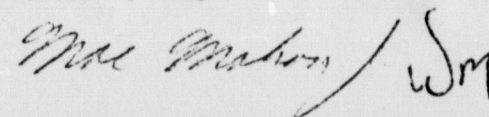
Jury finds def't. Not guilty on Count one.

Guilty on Count Two

Pre-sentence report ordered. Mac Mah. J. DM

12-17-74 Sentence 12:45.

12-17-74 Def't sentenced to 3 years and 3 years  
& special parole on Count 2. Def't to surrender  
on 12-26-74 in Courtroom 506





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2 UNITED STATES OF AMERICA  
3 vs.  
4 WILLIE L. ROLAND

5 New York, N. Y.  
6 November 21, 1974  
7 9:30 a.m.

8 (Trial resumed, jury present.)

9 CHARGE OF THE COURT

10 THE COURT: It now becomes my function to  
11 instruct you on the law that applies to the facts as you  
12 find them in this case. I am the exclusive judge of the  
13 law. And you must accept the law as I give it to you,  
14 whether or not you agree with it or whether or not you  
15 have some different notion about what the law is or ought  
16 to be. In short, I am the exclusive judge of the law.  
17 You, on the other hand, are the exclusive judge of the  
18 facts. You and you alone decide just what the facts are  
19 in this case. You decide what weight, what effect you  
20 will give to the evidence. You decide whether or not to  
21 believe a witness, and ultimately you decide whether the  
22 Government has sustained its burden of proving this  
23 defendant guilty beyond a reasonable doubt.

24 You are not to conclude from any rulings that  
25 I have made throughout this trial, or any questions that  
I have asked, that I have any opinion one way or the other

as to the guilt or innocence of this defendant. That decision is exclusively up to you.

Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence, consider the testimony of all of the witnesses, sift out what you believe, weigh it in the scale of your reasoning powers and draw such conclusions as your common sense and experience in life tell you that the evidence supports and justifies, and decide just where the truth lies in this case.

Now in this connection it is your memory of the evidence that controls. It is not the way I remember it, and not necessarily the way counsel remember it. If your memory squares with the lawyers' memory of the evidence as they wove the evidence together in their closing arguments you may accept their version of the evidence. But to the extent that you have a different recollection, you are bound to reject their version and rely on your own memory, and what I have said as to them also applies to me, although I do not intend in this very short trial to summarize the evidence. I am sure you have it all very fresh in mind. Your most important function is to determine which witnesses you are going to believe, and this is so as to every witness, whether called by the



Government or whether called by the defendant. You are not to give any greater credence to the Government witnesses simply because they are Police detectives, than you give to any other witness. You consider their testimony and measure its credibility by the same standards you apply to everyone else.

You are not to be influenced by the number of witnesses. You are concerned not with the quantity but with the quality of the evidence.

Now, the first test which you should apply in determining the trustworthiness of a witness is to measure what he says against your common sense. You are not bound to believe unreasonable statements, nor to accept statements that insult your intelligence, just because they are made under oath in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider his conduct and his manner on the stand. I saw you watching these witnesses with particular care as they were testifying. Obviously you were sizing them up. How did the witness impress you? Was the witness being frank with you, or was he being evasive? Was his version of the evidence straightforward? Was he trying to conceal anything? Was he just parroting answers? Did he have any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or

1 weak is his memory of important events? He he made any  
2 inconsistent statement on any earlier occasion, and if so  
3 what is its significance? In short, can you rely on the  
4 witness? Can you trust him? You ought to consider also  
5 his opportunity to know the facts about which he testified  
6 and the probability or improbability of what he said, and  
7 then how his testimony adds up when considered with the  
8 exhibits and with the other testimony. How does his story  
9 check out? Are there any inconsistencies, and if so how  
10 important are they?  
11

12 Now the defendant testified as a witness. He  
13 was not required by law to do so, and his appearance as  
14 a witness in his own behalf was purely voluntary on his  
15 part. If he had chosen not to testify, his failure to do  
16 so could not have been considered by you in any manner in  
17 determining his guilt or innocence. But having testified,  
18 the law requires that his testimony be judged and appraised  
19 by the same standards which you apply to the testimony of  
20 all the other witnesses, giving consideration, of course,  
21 to his natural interest in the outcome of this case, to  
22 his background, his personality, and the impression he  
23 made upon you on the stand.

24 Now the defendant testified that he had been  
25 convicted of the crime of assault. You may consider that



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fact in deciding whether to believe him. But you cannot

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consider the fact that he has earlier been convicted of

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another crime in deciding whether he is guilty of the crimes

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charged against him here.

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Now if you find that any witness has deliberately

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and willfully lied with respect to any material fact in his

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testimony offered at this trial, you may adopt one of two

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course. If you wish, you can accept as much of his testimony

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as you believe or, if you wish, you can reject his entire

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testimony.

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Before discussing the crimes charged here I

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want to remind you, as I did at the very outset of this

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trial, that an indictment is a mere accusation. It is not

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evidence of the truth of the charges made, and you are to

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draw no inference of guilt from the mere fact that a defendant

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has been indicted. An indictment simply means no more and no

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less, than that the defendant has been accused of a crime.

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Now the defendant here has denied the charges

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made against him, both by his plea of not guilty and by his

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testimony upon the stand. The defendant has no burden of

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proof to sustain in this case. He is under no obligation to

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produce any witnesses. He is presumed to be innocent and this

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presumption of innocence continues throughout the trial, and

during your deliberations. The presumption of innocence

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is overcome when, and only when, the Government establishes the guilt of the defendant beyond a reasonable doubt.

Now what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon what one of you might regard as an unpleasant duty.

The Government is not required to prove a defendant's guilt beyond every possible doubt, nor to an absolute or mathematical certainty, because such measure of proof is usually impossibility in human affairs.

You should review all of the evidence as you remember it, sift out what you believe, weigh it in the scale of your reasoning powers, and discuss it with your fellow jurors. If that process produces a solemn belief or conviction in your mind, such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if your mind is wavering, or so uncertain that you would hesitate to act if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and you must render a verdict of not guilty.



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2 two counts. Each of these counts charges a separate  
3 offense or crime, and each count must be considered  
4 separately, and because they are very brief I shall read  
5 them to you and we will send a copy of the indictment,  
6 in to you during your deliberations for your guidance.

7 The grand jury charges in the first count that  
8 on or about the 26th day of March, 1974, in the Southern  
9 District of New York, Willie L. Roland, the defendant,  
10 unlawfully, intentionally and knowingly did distribute and  
11 possess with intent to distribute a Schedule 1 narcotic  
12 drug controlled substance, to wit, approximately 24.5  
13 grams of heroin. And then the indictment cites certain  
14 statutes.

15 Count 2 charges exactly the same offense but on  
16 a different date, June 14, 1974, and the amount of heroin  
17 is alleged to be 28.8 grams.

18 Before you can find the defendant guilty on  
19 either of Counts 1 or 2, the Government must prove to your  
20 satisfaction beyond a reasonable doubt each of the  
21 following three elements: One, that on or about the date  
22 set forth in the count which you are considering the defendant  
23 distributed heroin or possessed heroin with an intent to  
24 distribute it. While Count 1 and 2 allege both  
25 distribution of heroin and possession of heroin with an

intention to distribute it, the Government is not required to prove both. The first element is satisfied if you find that the defendant either intentionally distributed heroin or knowingly possessed heroin with an intent to distribute it.

Now the word distribute means the actual, constructive or attempted transfer or passing on of the drugs. The word possession simply means either the actual physical possession of heroin, such as holding it in your hand, or having it on your person or such control of the drug that the defendant could move it himself or cause another person to move it at his direction or on his request. This is what is known as constructive possession.

Now the word intent refers to a person's state of mind. So then possess with intent to distribute means to control a narcotic drug with the state of mind or purpose to pass it to someone else or to transfer it or to sell it or to distribute it.

The second element is that the substance which was distributed or possessed with intent to distribute was in fact heroin.

Now the second element is satisfied if you believe the testimony of the chemist, which was submitted to you by stipulation, to the effect that if he were called to testify he would testify that he examined and analyzed



the contents of the exhibits received in evidence and found that they did in fact contain heroin.

Now the third element is that in distributing heroin or in possessing heroin with an intention to distribute it, the defendant acted knowingly and willfully.

Now an act is done knowingly if it is done voluntarily and purposely and as a result of the exercise of one's free will, and not because of mistake, accident, negligence, ignorance, or other innocent reason. An act is done willfully if it is done knowingly, intentionally and purposefully.

Bear in mind knowingly does not mean that the defendant must know that he is breaking any particular law. It simply means that he must know what he is doing and that he must do it deliberately and on purpose, and intentionally.

Now in determining knowledge and intent it is obviously impossible to look into the defendant's mind, but you may infer knowledge and intent by examining all of the surrounding circumstances. In short, actions speak louder than words in trying to decide what is on a person's mind.

In determining whether the defendant acted knowingly intentionally, you should give consideration as to whether the transactions here were out in the open,

whether they were straightforward or circuitous, whether they were in cash, whether cash was dealt with, whether they were handled in a devious, secretive sort of way. And any other acts or conduct on his part or anything that he may have said which in any way demonstrates to you that there was a consciousness of guilt on his part, in other words, that he knew that he was dealing here in dope.

You should consider each count separately. If you find as to the count which you are considering that the Government has failed to prove beyond a reasonable doubt all three elements of the crime as I have defined them, then you must acquit the defendant on that count. On the other hand, if you find, as to the count which you are considering, that the Government has proved beyond a reasonable doubt each of the elements of the crime as I have defined them, then you should convict him on that count.

Now the question of possible punishment of the defendant in the event of a conviction is no concern of yours, and it should not in any sense enter into or influence your deliberations. Your duty is to decide the case, to decide whether the Government has sustained its burden of proving this defendant's guilt beyond a



reasonable doubt. The duty of imposing punishment, if any, in the event of a conviction rests exclusively upon the Court.

Now, when you retire to the jury room treat one another with courtesty and respect, as I know you will. If differences of opinion arise your discussions should be dignified, calm and intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case, as you remember it, and the law as I have given it to you in this charge. You are each entitled to your own opinion. No juror should acquiesce in a verdict against his individual, conscientious judgment. Nevertheless, I would point out that no one should enter a jury room with such pride of opinion that he would refuse to change his mind no matter how convincing or how intelligent the argument of a fellow juror or jurors is. Discussion and deliberation are part of our democratic jury process, and you should approach your task in that spirit. Talk out your differences. Each of you should, in effect, decide the case for himself or herself after thoroughly reviewing the evidence and talking out your positions with your fellow jurors, with an open mind and with a desire to reach a verdict. If you do that you will be acting in the true democratic process of the American system of justice.

1  
2 There are twelve of you on this jury. The  
3 alternate will be excused with the thanks of the Court  
4 before you retire for your deliberations. Any verdict  
5 must be the unanimous verdict of all of you, and it must  
6 represent the honest conclusion of each of you.

7 I submit the case to you with every confidence  
8 that you will fully measure up to the oath which you took  
9 as members of the jury to decide the issues submitted to  
10 you fairly and impartially, and without fear or favor.

11 Now, members of the jury, if you find that  
12 you find that the Government has failed to establish the  
13 guilty of the defendant beyond a reasonable doubt, you  
14 should acquit him. If you find that the defendant has not  
15 violated the law you should not hesitate for any reason  
16 whatever to render a verdict of not guilty.

17 But, on the other hand, if you find that the  
18 Government has established the guilt of the defendant beyond  
19 a reasonable doubt, you should not hesitate because of  
20 sympathy or any other reason to render a verdict of guilty.

21 Your foreman will return an oral verdict in  
22 open court of either guilty or not guilty on each count.  
23 Consider each count separately and your verdict will be  
24 either guilty or not guilty on Count 1, guilty or not  
25 guilty on Count 2.



Are there any exceptions, gentlemen?

(At the side bar)

MR. DAVIS: The Government has no exceptions.

MR. THAU: Your Honor, the defendant excepts to that part of your charge, the later portion of it, where you said in substance if you find that the defendant has not violated the law you should acquit him. That causes the problem to make an affirmative finding of innocence, and my suggestion is that they be told if you have but a reasonable doubt whether the defendant violated the law.

THE COURT: I note your exception.

MR. THAU: There is additionally in your Honor's discussion of intent the way it was couched almost a presupposition and an assumption, as I heard it, that the defendant did transact the business testified to here by Nieves. Your Honor went at great length into that the defendant in the transaction had been furtive and whether he intended to do what, as I read it, your Honor suggested he had in fact done, which was transact the business. I object to that.

THE COURT: I note your exception.

MR. THAU: Thank you.

Your Honor also said that their most important

function is to decide which witnesses they were to believe. In a criminal case it is my judgment that they can well disbelieve the defendant entirely and yet still have a reasonable doubt based strictly on the Government's evidence. It is not a balancing of beliefs in a criminal case.

THE COURT: I note your exception.

MR. THAU: I would ask your Honor to add that reasonable doubt may arise from mere lack of evidence.

THE COURT: I think I did.

MR. THAU: Thank you, your Honor.

(In open court)

(A marshal was duly sworn.)

(At 10:11 a.m., the jury retired to commence their deliberations.)

THE COURT: Are there any exhibits other than the heroin in this case?

MR. DAVIS: The two heroin exhibits and also the two telephone numbers, your Honor, that were introduced.

THE COURT: We won't send them in unless the jury asks for them. We have your permission, Mr. Thau, to send them in if the jury asks, and could you agree on what those exhibits are and hand them to the Clerk now, so it won't be necessary to call you down if the jury



1  
2 sends in for the exhibits. We will just send in the two  
3 telephone numbers and not the dope.

4 Well, you asked them to see whether their  
5 fingerprints would fit on the glassine envelope.

6 MR. THAU: In that respect I would like to  
7 make a record of something just so that it is clear. I  
8 was really terribly embarrassed to find out during Mr.  
9 Davis' summation that I had inadvertently believed and  
10 argued on my summation that the particular envelope to  
11 which I referred was one which was originally in what was  
12 transferred to Nieves. As it turns out, and Mr. Davis  
13 brought me up on it on summation, unless they believe I  
14 made a dishonest argument, this envelope was supplied by  
15 the chemist apparently. I am terribly sorry. I apologize  
16 to the Court and as I did to Mr. Davis privately.

17 THE COURT: I have never known a case where  
18 that wasn't the situation. The chemist takes it out of  
19 the envelope, measures it and puts it back in another one.

20 MR. THAU: I have seen it done otherwise, your  
21 Honor.

22 THE COURT: I never can recall one in fifteen  
23 years on this bench.

24 (At 11:25 a.m., a note was received from  
25 the jury.)

1  
2 THE COURT: I think the answer here probably  
3 should be, is that there is no transcript in existence  
4 of the testimony, and the written report is not in  
5 evidence.

6 MR. DAVIS: Fine.

7 MR. THAU: All right.

8 THE COURT: I will put "No, because there is  
9 no transcript of Mr. Roland's testimony yet available."  
10 I guess that is it. I suppose I should tell them.

11 MR. DAVIS: The note read "Mr. Roland's testimony  
12 to Mr. Figueroa," and I think --

13 MR. THAU: There was no testimony to Figueroa.

14 MR. DAVIS: Maybe they are referring to a  
15 statement of Figueroa. Is that possible?

16 MR. THAU: There is no evidence that Roland  
17 testified before Figueroa, for one thing. I think the  
18 Court ought to advise them of that.

19 THE COURT: Let's get the jury in and I will  
20 advise them. That is probably the best way to do it.

21 Bring in the jury.

22 (At 11:33 a.m. the jury returned to  
23 the courtroom.)

24 (Court Exhibit 1 marked.)

25 THE COURT: I have your note "Would it be



possible to see a transcript of Willie Roland's testimony to Mr. Figueroa and the written report of the policeman Ralph Nieves."

The answer is "No, there is no transcript of any testimony that Roland gave to Mr. Figueroa, none in evidence, and there is no report of Policeman Ralph Nieves in evidence."

You may resume your deliberations.

(At 11:34 the jury resumed their deliberations.)

MR. THAU: May we be heard by way of exception. Prior to your Honor's answering the note it had been my request that the Court make it plain to the jury that there was no evidence in this case that this defendant had testified before Nick Figueroa, and it had been my wish that the Court apprise the jury of that fact.

THE COURT: Call the jury back. I didn't so understand it. I think you are being exceedingly captious, Mr. Thau.

MR. THAU: I apologize to the Court. It is not my intention, I assure you.

- - -

MR. THAU: I would also ask the Court to not tell the jury that it is at the request of any particular side that your Honor is adding this.

(At 11:36 a.m. the jury returned to the courtroom.)

THE COURT: Perhaps I did not make clear. There is no evidence that Mr. Roland ever testified before Mr. Figueroa, so not only is there no transcript, there is no evidence that he ever so testified. You may resume your deliberations.

(At 11:37 a.m. the jury resumed their deliberations.)

MR. DAVIS: Thank you, your Honor.

(At 1:15 p.m. the jury went out for their luncheon recess.)

(At 2:15 p.m. the jury resumed their deliberations.)

(At 4:00 p.m. a note was received from the jury.)

(Note marked Court Exhibit 2.)

(At 4:10 p.m. the jury returned to the courtroom.)

THE COURT: I have a note that you are unable to reach a decision, what shall we do. What you do is go back and try again. It is only natural sometimes to resent the opinions of those who disagree with us. Sometimes after long discussion hostilities spring up that close our minds to other people's advice. In a



1 large proportion of cases absolute certainty cannot be  
2 expected. That is why we have the jury system. That is  
3 why we put it in the hands of twelve people drawn from  
4 the community, twelve people who don't know anything about  
5 the case who are equally qualified, intelligent, to serve  
6 as jurors. Your verdict, of course, must be the verdict  
7 of each individual juror and not a mere acquiescence in  
8 the conclusion of your fellows. Yet you should examine  
9 the questions submitted to you with candor and with a  
10 proper regard in deference to the opinions of each other.  
11 It is your duty to decide the case if you can do so  
12 conscientiously. You should listen to each other's  
13 arguments with a disposition to be convinced as I told  
14 you in the instructions proper. Talk out your differences.  
15 If much the larger number of you is for conviction, a  
16 dissenting juror should consider whether his doubt is a  
17 reasonable one when it makes no impression upon the mind  
18 of so many others who are equally honest and equally  
19 intelligent. If, on the other hand, the majority is  
20 for acquittal, the minority ought to ask themselves  
21 whether they might not reasonably doubt the correctness  
22 of a judgment which was not concurred in by the majority.  
23

24 What I have just read to you is taken from the  
25 decision of the Supreme Court many, many years ago, when

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2 a jury reported an inability to agree as this one has done.

3 I therefore ask you in the light of this  
4 instruction to go back to continue your deliberations  
5 and see whether you can't conscientiously come to a  
6 unanimous verdict.

7 MR. THAU: May we approach the bench before the  
8 jury is discharged or sent back to deliberate?

9 THE COURT: All right, Mr. Thau.

10 (At the side bar)

11 MR. THAU: Your Honor, we except to an Allen  
12 charge some five hours only after deliberations have been  
13 started. In addition, the manner in which the Court  
14 stated its instruction just now suggested that conviction  
15 would be very appropriate in this case because the exact  
16 words were that absolute certainty cannot be expected,  
17 which suggests that the Court is suggesting a conviction  
18 because --

19 THE COURT: You are frivolous. I note your  
20 exception.

21 MR. THAU: May I add one thing, your Honor, the  
22 jury should be instructed that it is entirely proper if  
23 they cannot reach an agreement not to reach one.

24 THE COURT: I won't do that.  
25



(In open court)

THE COURT: Retire for your deliberations.

(At 4:15 p.m. the jury resumed their deliberations.)

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(At 5:30 p.m. a note was received from the jury.)

THE COURT: They want the evidence bag with all contents, both first and second evidence bags with all contents. They would also like to hear the testimony of Officer Nieves relating to the exchange of heroin in both instances.

(Testimony of Agent Nieves read.)

MR. DAVIS: May I speak briefly, your Honor?

THE COURT: No, you may not speak.

Retire and continue your deliberations.

(At 6:30 p.m. the jury resumed their deliberations.)

(At 7:00 p.m. the jury went out for their dinner.)

(At 8:25 p.m. the jury resumed their deliberations.)

(Note marked Court Exhibit 3.)

(At 8:30 a note was received from the jury.)

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(At 8:45 the jury returned to the  
courtroom.)

(Jury roll called - all present)

THE CLERK: Madam Forelady, have you reached  
a verdict?

THE FORELADY: Yes, we have.

THE CLERK: How do you find the defendant on  
Count 1?

THE FORELADY: We find the defendant on Count 1  
not guilty.

THE CLERK: How do you find on Count 2?

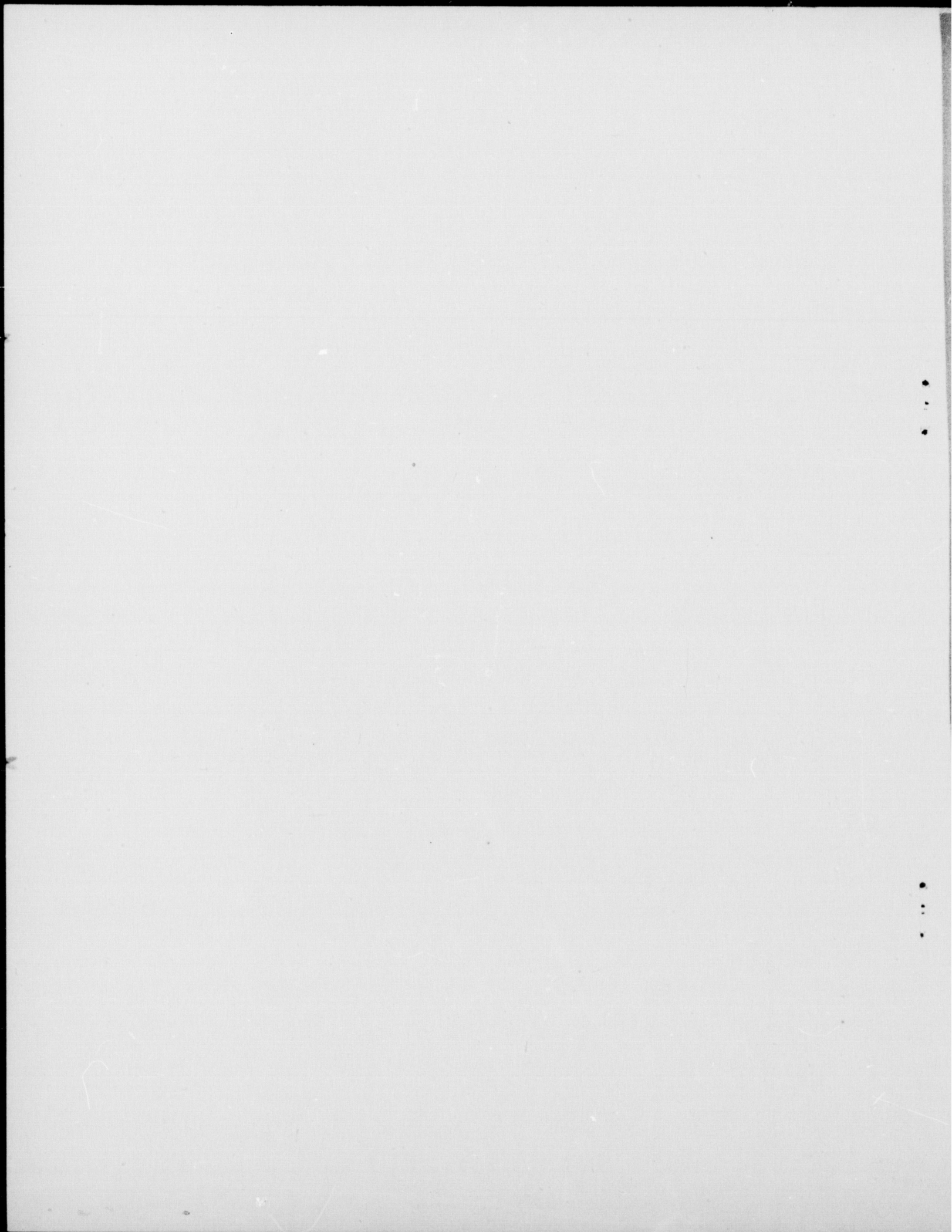
THE FORELADY: On Count 2, guilty.

MR. THAU: Your Honor, I move the jury be  
polled on Count 2.

THE COURT: Would you noll the jury on Count 2.

(Each juror, upon being asked by the Clerk,  
"Is that your verdict?" on Count 2, answered in  
the affirmative.)





Certificate of Service

February 6, 1975

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Phyllis Shook Barber :